IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE TWENTIETH DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT

**THE HON'BLE MR JUSTICE S.ANANDA REDDY**

**WRIT PETITION NO : 2673 of 1997**

Between:

B.Rattaiah S/o.Chinna Venkataramayya
R/O.Gudivada Depot Krishna Dist

**..... PETITIONER**

AND

1 Depot Manager APSRTC
Gudivada , Krishna Dist
2 Divisional Manager APSRTC
Machilipatnam , Krishna Dist.
3 Regional Manager APSRTC
Vijayawada , Krishna dist.
4 Vice-Chairman cum Managing Director of APSRTC
Musheerabad , Hyderabad.

**....RESPONDENTS**

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ order or direction more particularly in nature of Mandamus declaring the action on the respondents in not paying the basic salary last drawn, prior to reversion as illegal , arbitrary and against to the Article 14 and against to the Principles of Natural Justice and consequently direct the respondents to pay the arrears and to pay basic scale salary last drawn prior to reversion from 25-11-93.

**Counsel for the Petitioner MR.T.S. VENKATARAMANA**

**Counsel for the Respondents 1 TO 4:MR K.HARINATH (SC FOR APSRTC)**

**The Court made the following:**

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**ORDER:**

This Writ Petition is filed by the petitioner, aggrieved by the action of the respondents in fixation of his pay on reversion from the post of conductor to the post of booking clerk contrary to the regulations and lower than the scales that are being drawn by the juniors to the petitioner.

2. According to the petitioner, he was appointed as a booking clerk in the year 1974. After three years of his service, he was promoted as conductor and was posted to various Depots till 1993. In May 1993, when the petitioner was discharging his duties as conductor, fell down in the bus, which was moving, due to which, the nerves in the right leg were damaged. Though, the petitioner got treated, he was unable to stand for a long. Therefore, he was advised not to stand for long. Accordingly, he made a representation to the first respondent on 27.09.1993 requesting the respondent authorities to post him as booking clerk. Due to the health condition of the petitioner, the said representation was favourably considered by the respondents and reverted him from the post of conductor to the post of booking clerk by proceedings of the second respondent dated 5.11.1993 and final orders were given effect on 10.11.1993. The petitioner was posted at Gudivada Depot as booking clerk and was allowed to continue there. However, the grievance of the petitioner is that while fixing the pay in the post of booking clerk, the respondent authorities have reduced the pay of the petitioner. Though for a period of three months the salary of the conductor was paid to the petitioner, thereafter the same was reduced to Rs.2780/- + 15 = Rs.2975/-. Thus, the petitioner was paid reduced salary, though he was entitled for protection of his pay. The petitioner also claimed that even under the Regulation 9 of the Employees' (Pay and Allowances) Regulations, 1964 (for short the Regulations) the petitioner is entitled for fixation at least the maximum scale which is payable in the cadre of booking clerk, but, contrary to the said Regulation the scale was fixed which he was drawing prior to his promotion from the post of booking clerk to the post of conductor. The petitioner has also stated that similarly placed persons were allowed to draw higher scale than the petitioner was allowed. Therefore, the petitioner sought appropriate orders.

3. A counter affidavit has been filed on behalf of the respondents admitting the facts that the petitioner requested for reversion from the post of conductor to the post of booking clerk on medical grounds and the said request was accepted. After reversion to the post of booking clerk, the petitioner who was drawing a pay of Rs.1770/- as conductor was revised as per audit objection, fixing his pay as was drawn by him from the last annual increment drawn before the date of promotion as conductor. Accordingly, the pay of the petitioner was fixed and subsequently his pay was also revised from time to time. The respondents have denied the contention of the petitioner that his pay is to be fixed in accordance with the Regulation 9(1)(b). According to the respondents the Regulations contemplate only the pay fixation of the employees who were promoted and appointed from one cadre to another category, and it would not be applicable to the case of the petitioner.

4. At the time of hearing, the learned Standing Counsel for the Corporation also reiterated the stand, which was stated in the counter affidavit.

5. Heard both sides and Considered the material on record as well as the Regulations.

6. Admittedly, the petitioner was reverted from the post of conductor to the post of booking clerk at his request on health grounds and accordingly an order of reversion was passed reverting the petitioner to the post of booking clerk. The said order was passed in the year 1993. The dispute is only with reference to the fixation of the pay in the reverted post. According to the petitioner, he was paid the scale that was being drawn as conductor, for the period of three months and thereafter it was reduced without serving any orders on the petitioner and the pay was fixed at the scale, he was drawing as a booking clerk before his promotion to the post of conductor. According to the petitioner, the said fixation is incorrect. The petitioner relies upon Regulation 9 of the Employees' (Pay & Allowances) Regulations, 1964. The relevant Regulation 9(1)(b) which reads:

> "Where the appointment to the new post does not involve the assumption of such duties and responsibilities, he shall draw as initial pay, the pay in the time-scale of new post which is equal to his substantive pay in the old post, or if there is no such stage, the stage next below that pay plus personal pay equal to the difference and in either case he shall continue to draw that pay until such time as he would have earned an increment in the time scale of the old post or for the period after which an increment is earned in the time-

scale of the new post, whichever is less but if the appointment to the new post is made on his own request and the maximum pay in the time-scale of that post is less than his substantive pay in respect of the old post, he shall draw that maximum as his initial pay."

A perusal of the above Regulations show that, if the appointment to the new post is made on his own request and the maximum pay in the time-scale of that post is less than his substantive pay in respect of old post, he shall draw that maximum as his initial pay. Therefore, the scale of pay of the petitioner has to be fixed in the post of booking clerk at the maximum as his initial pay. In fact in the counter affidavit it was stated that the petitioner's scale was fixed at the maximum of the booking clerk, but subsequently, as per the advice of the Audit Wing, the scale of the petitioner was re-fixed. The said re-fixation of the petitioner's scale as per the Audit objection was not in accordance with the above referred Regulations. Under the above circumstances, the respondents are directed to re-fix the scale of the petitioner at the maximum of the booking clerk as on10.11.1993 when he was actually reverted from the post of conductor to the post of booking clerk within a period of six weeks from the date of receipt of the copy of the order and accordingly, revise the said scale as per the Revisions that have been effected from time to time. As a result of the re-fixation, if any arrears are payable to the petitioner, the said amount shall be paid, within four weeks from the date of passing of the order re-fixing the scale of the petitioner.

7. The Writ Petition is disposed of accordingly. No costs.

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20th AUGUST 2004

KVRM/TSR

To

1 The Depot Manager, APSRTC
Gudivada , Krishna Dist
2 The Divisional Manager, APSRTC
Machilipatnam , Krishna Dist.
3 The Regional Manager, APSRTC
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